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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,192	02/25/2005	Norihisa Hirota	TYOS123084	9236
26389 7590 06/08/2009 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER KASHNIKOW, ERIK				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
06/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/500,192

Applicant(s)

HIROTA ET AL.

Examiner

ERIK KASHNIKOV

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/07/09 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette et al. (US 5,520,877) in view of Jabarin et al. (US 4,476,170) Gittner et al. (US 4,177,239) and Sugiura (US 4,641,758).
4. In regards to claim 2 Collette et al. teach a method for a biaxially orientated bottle shaped container (column 6 lines 13-16). Collette et al. teach an initial step of blow molding the preform to a size larger than the final product size (figure 9 and column 9

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lines 53-58). Collette et al. then teach heat shrinking the intermediate product (figure 11 and column 10 lines 29-54). Collette et al. then perform a second step of blow molding to obtain the final product (column 10 lines 54-56).

5. While Collette et al. teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to the unrestrained bottom during the primary blow molding.

6. Jabarin also teaches biaxially stretched blow molded containers (column 3 lines 36-46).

7. Jabarin teaches that it is well known in the art to blow mold containers such as bottles are made utilizing a blow molding process that is without any mechanical axial stretching, i.e. is in an unrestrained state (column 7 lines 60-65).

8. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. with that of Jabarin because the method of Collette et al. which offers would benefit from the method of Jabarin which produces a polyester bottle having increased resistance to carbon dioxide and oxygen gas permeation as well as saves time and money by eliminating the need for a stretch rod (column 3 lines 23-25).

9. While Collette et al. and Jabarin teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than

the final product they are silent with regards to a uniformly orientated and thin walled bottom.

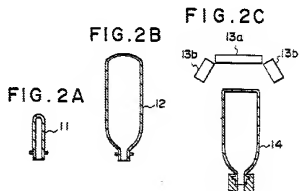
10. Sugiura teach self standing bottles for holding liquids (column 1 lines 5-10). In regards to claim 1 and 2 Sugiura teach containers with thin biaxially orientated bottomed bottles (claim 1), and that the entire bottle has uniform thickness for mechanical strength (column 8 lines 45-50). However Sugiura is silent regarding the biaxial orientation being uniform.

Gittner et al. teach that it is know in the art to uniformly orient the bottom of container such as bottles (column 9 lines 50-56).

11. In regards to claim 1, while Collette et al. Jabarin Gittner et al. and Sugiura are

silent regarding X-ray diffraction values and orientation parameter values, it would be inherent that an article made of the same material in the same way would have the same properties.

12. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. and Jabarin with that of Sugiura and Gittner et al because the invention of Sugiura offers good mechanical rigidity (column 1 lines 35-41) whereas the container of Gittner et al. offers a bottom whose quality of characteristics is more inline with the rest of the portions of the bottle (column3 lines 30-43).



Response to Arguments

13. In regards to Applicant's arguments regarding the 112 2nd paragraph rejection the arguments filed 04/07/09 are persuasive, the 112 2nd paragraph rejection of the claims has been withdrawn.

14. In response to Applicant's arguments concerning the Collette et al, Sugiura and Gittner references While these references do not teach an unrestrained bottom portion, they are not being relied upon to teach the unrestrained bottom portion. The Jabarin reference is now being used to teach this. Examiner notes that while Jabarin, Sugiura and Gittner do not disclose all the features of the present claimed invention, they are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references. Examiner points out that all aspects of the method are present, and as such one of ordinary skill in the art would be able to achieve a bottom of a container which has a uniform wall thickness and uniform elongation, for the reasons set forth in the motivation statements above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow
Examiner
Art Unit 1794

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794